IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10329 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE H.K. RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 : NO

GSRTC

Versus

PRATAPSINH R RATHOD, THR'H SECRETARY,ST KARMACHARI MANDAL

Appearance:

MR HS MUNSHAW for Petitioner

MR JS BRAHMBHATT for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 25/04/2000

ORAL JUDGEMENT

Heard learned advocates for the respective parties.

2. In the present writ petition, the Award dated 18th February, 1999 passed by the Industrial Tribunal, Ahmedabad in Reference (IT) No. 152 of 1992 is under challenge. By the impugned Award, the Industrial Tribunal has set-aside the order of punishment of stoppage of four increments with permanent effect imposed upon the respondent workman. Further, by the impugned Award, the Industrial Tribunal has directed the petitioner-Corporation to release all the increments, pay difference of wages/salary with all consequential benefits and pay costs of the Reference which is quantified at Rs. 1,000/=.

3. This Court {Coram : M.C Patel, J.} while admitting the matter on 24.12.1999 has issued rule and notice as to interim relief returnable on 12.3.2000.

4. Today ie., 25.4.2000 when the matter was called out, learned advocates appearing for the respective parties gave consent for its final disposal. Hence, with the consent of both the learned advocates this matter is heard and finally disposed of by this judgment.

5. Mr. Munshaw, learned advocate appearing for the petitioner-Corporation has submitted that the Industrial Tribunal, Ahmedabad has committed gross error in respect to the fact that passengers were not examined by the competent authority in the departmental inquiry and on that ground finding has been declared vitiated. Mr. Munshaw further pointed out that in past 37 defaults have been committed by the respondent workman and these were not considered by the Tribunal while adjudicating the Reference.

6. On the other hand, Mr. Brahmbhatt, learned advocate appearing for the respondent workman submitted that the Tribunal has decided the matter on merits. He submitted that the bus was checked within a distance of 3 kms. and the passengers have paid fine to the checking staff and at the time of checking, the respondent Conductor was doing road-booking and the way-bill was open and there was no dishonest intention on the part of the respondent workman, and therefore, the Industrial Tribunal has rightly considered the question of finding given by the Inquiry Officer because of the fact that though the passengers were called in the departmental inquiry to give evidence, but they have not appeared, and therefore, relying upon the statements of these passengers alone, the Inquiry Officer has come to the conclusion that the misconduct is found to be proved against the respondent workman. He also submitted that

the past record was considered properly by the competent authority while imposing punishment of stoppage of four increments with future effect. According to Mr. Brahmbhatt, punishment cannot be based upon the past record only but the competent authority shall have to consider the present misconduct.

7. I have heard both the learned advocates at length. Considering the submissions made by both the learned advocates, the fact remains that on 30th April, 1987 when the bus was inspected by the Inspection Squad, it was found that the respondent was involved in financial irregularities and as a result thereof, he was served with a chargesheet on 16.7.1987 and subsequent thereto when the charges came to be proved at the inquiry stage, he was dismissed from service on 16.3.1988. Feeling aggrieved by the said dismissal order, the respondent workman preferred an Appeal before the Appellate Authority. The first Appellate Authority considered the case and defence of the respondent workman and granted reinstatement with continuity in service but without payment of backwages and stoppage of four annual increments with future effect. Looking to the reasons given by the Tribunal in respect to the fact that passengers were not examined during the departmental inquiry that finding is contrary to the decision of the Apex Court in case of State of Haryana v. Ratan Singh, reported in AIR (1977) SC 1512, and therefore, the finding which has been found to be perverse by the Tribunal relying on the fact that passengers were not examined in the departmental inquiry and only Reporter was examined, that cannot be sustained. However, considering the merits of the matter, if the misconduct in question is found to be proved and considering 37 past defaults and looking to the fact that at the time of checking, the respondent was doing road booking and the way bill was open and the passengers have paid fine to the checking staff and the bus was checked within 3 kms. distance, the punishment of stoppage of four increments is on the higher side. Now, looking to the alleged misconduct the said punishment of stoppage of four increments with future effect is harsh, unjust and will also affect the future services of the respondent workman upto his retirement, and according to my opinion, instead of stoppage of four increments, if two increments are stopped with cumulative effective and the direction with respect to payment of full difference of wages is modified and instead of giving total amount of arrears and difference of salary, if it is paid at the rate of 50 % then it will meet the ends of justice. Accordingly, the Award dated 18th February, 1999 passed by the

Industrial Tribunal in Reference (IT) No. 152 of 1992 is hereby modified as under :-

The petitioner-Corporation is directed to impose punishment of stoppage of two increments with cumulative effect upon the respondent workman. The petitioner Corporation is further directed to make payment of 50% [fifty per cent] of difference of salary and wages with all consequential upward revisions and benefits. The petitioner Corporation is also directed to pay difference of salary and wages at the rate of 50% [fifty percent] for the interim period, by computing all consequential benefits including upward pay revision. The order of payment of costs shall remain intact.

8. In the result, this petition stands partly allowed. The Award dated 18.2.1999 passed by the Industrial Tribunal in Reference (IT) No. 152 of 1992 stands modified to the aforesaid extent. Rule is made absolute to that extent with no order as to costs. The petitioner-Corporation is directed to implement the modified award within a period of six weeks from the date of receipt of certified copy of this judgment.

[H.K Rathod, J.]

Prakash*